

Senate File 2364

S-5089

1 Amend Senate File 2364 as follows:

2 1. By striking everything after the enacting clause and  
3 inserting:

4 <DIVISION I

5 PUBLIC CONSTRUCTION BIDDING REQUIREMENTS

6 Section 1. Section 26.2, subsection 3, paragraph b,  
7 subparagraph (5), Code 2020, is amended to read as follows:

8 (5) Construction or repair or maintenance work performed  
9 for a city utility under chapter 388 when such work is  
10 performed by its employees or performed for a rural water  
11 district under chapter 357A by its employees when such work  
12 relates to existing utility infrastructure or establishing  
13 connections to existing utility infrastructure. For purposes  
14 of this subparagraph, "utility infrastructure" includes  
15 facilities used for the storage, collection, disposal,  
16 treatment, generation, transmission, or distribution of water,  
17 sewage, waste, electricity, gas, or telecommunications service.

18 Sec. 2. Section 26.2, subsection 3, paragraph b, Code 2020,  
19 is amended by adding the following new subparagraph:

20 NEW SUBPARAGRAPH. (6) Construction or repair or  
21 maintenance work performed for a rural water district under  
22 chapter 357A by its employees.

23 Sec. 3. Section 26.4, Code 2020, is amended to read as  
24 follows:

25 ~~26.4 Exemptions from competitive bids and quotations~~  
26 Architectural and engineering services — exemptions —  
27 prohibitions.

28 1. Architectural, landscape architectural, or engineering  
29 design services procured for a public improvement are not  
30 subject to sections 26.3 and 26.14.

31 2. Fee-based selection of an architect, landscape  
32 architect, or engineer for a public improvement shall be  
33 prohibited.

34 Sec. 4. Section 262.34, Code 2020, is amended by adding the  
35 following new subsection:

1     NEW SUBSECTION. 6. Notwithstanding any provision of this  
2 chapter to the contrary, the state board of regents shall  
3 not be authorized to enter into a design-build contract to  
4 construct, repair, or improve buildings or grounds. For  
5 purposes of this subsection, "*design-build contract*" means  
6 a single contract providing for both design services and  
7 construction services that may include maintenance, operations,  
8 preconstruction, and other related services.

9     Sec. 5. EFFECTIVE DATE. The following, being deemed of  
10 immediate importance, takes effect upon enactment:

11     The section of this division of this Act amending section  
12 262.34.

13     Sec. 6. APPLICABILITY. The section of this division of  
14 this Act amending section 262.34 does not apply to projects  
15 using design-build if an architect has entered into a contract  
16 to work with the state board of regents on a project using  
17 design-build prior to the effective date of the section of this  
18 division of this Act amending section 262.34.

19                                   DIVISION II

20                                   GUARANTEED MAXIMUM PRICE CONTRACTS

21     Sec. 7. NEW SECTION. 26A.1 Definitions.

22     As used in this chapter, unless the context clearly  
23 indicates otherwise:

24     1. "*Construction manager-at-risk*" means a sole  
25 proprietorship, partnership, corporation, or other legal entity  
26 that assumes the risk for the construction, rehabilitation,  
27 alteration, or repair of a project and provides consultant  
28 services to the government entity in the development and design  
29 phases, working collaboratively with the design professionals  
30 involved.

31     2. "*General conditions*" means work which will not be  
32 incorporated into the completed project. This work includes  
33 but is not limited to job site cleaning and temporary  
34 structures.

35     3. "*Governmental entity*" means the state, political

1 subdivisions of the state, public school corporations, and all  
2 officers, boards, or commissions empowered by law to enter  
3 into contracts for the construction of public improvements,  
4 including the state board of regents.

5 4. *"Guaranteed maximum price contract"* means the agreed  
6 to fixed or guaranteed maximum price pursuant to a contract  
7 entered into by the construction manager-at-risk and the  
8 governmental entity.

9 5. *"Public improvement"* means as defined in section 26.2.

10 6. *"Repair or maintenance work"* means as defined in section  
11 26.2.

12 7. *"Self-perform"* means work that is executed by  
13 the construction manager-at-risk without the use of a  
14 subcontractor. Electrical, mechanical, fire suppression, and  
15 plumbing work may not be self-performed.

16 Sec. 8. NEW SECTION. **26A.2 Authorization.**

17 Notwithstanding any other law to the contrary, a  
18 governmental entity shall be authorized to enter into a  
19 guaranteed maximum price contract for the construction of a  
20 public improvement pursuant to this chapter.

21 Sec. 9. NEW SECTION. **26A.3 Guaranteed maximum price**  
22 **contract — process.**

23 1. A governmental entity shall publicly disclose the  
24 governmental entity's intent to enter into a guaranteed  
25 maximum price contract and the governmental entity's selection  
26 criteria at least fourteen days prior to publishing a request  
27 for statements of qualifications. Public disclosure shall  
28 be in a relevant contractor plan room service with statewide  
29 circulation, a relevant construction lead generating service  
30 with statewide circulation, and on an internet site sponsored  
31 by either a governmental entity or a statewide association that  
32 represents the governmental entity.

33 2. The governmental entity shall select or designate an  
34 engineer licensed under chapter 542B, a landscape architect  
35 licensed under chapter 544B, or an architect licensed

1 under chapter 544A by utilizing a quality-based selection  
2 process. Fee-based selection of the engineer, landscape  
3 architect, or architect shall be prohibited. The engineer,  
4 landscape architect, or architect selected or designated by  
5 the government entity under this subsection shall have the  
6 responsibility of preparing construction documents for the  
7 project and shall review the construction for conformance with  
8 design intent.

9     3. a. (1) The governmental entity shall prepare a request  
10 for statements of qualifications. The request shall include  
11 general information on the project site, project scope,  
12 schedule, selection criteria, and the time and place for  
13 receipt of statements of qualifications. Selection criteria  
14 and general information included in the request for statements  
15 of qualifications may be developed in coordination with  
16 the engineer, landscape architect, or architect selected or  
17 designated by the governmental entity as provided under this  
18 section.

19     (2) Selection criteria may include the contractor's  
20 experience undertaking projects of similar size and scope  
21 in either the public or private sector, past performance,  
22 safety record, proposed personnel, and proposed methodology.  
23 Selection criteria shall include experience in both the public  
24 and the private sector. Selection criteria shall not include  
25 specific delivery methods, including guaranteed maximum price  
26 projects. In addition, selection criteria shall not include  
27 training, testing, or other certifications that may only  
28 be obtained through organized labor affiliations or other  
29 limited-membership organizations.

30     (3) A request for statements of qualifications under this  
31 subsection shall be subject to the requirements of section  
32 73A.28. In addition, a governmental entity shall not by  
33 ordinance, rule, or any other action relating to the request  
34 for qualifications stipulate criteria that would directly  
35 or indirectly restrict the selection of a construction

1 manager-at-risk to any predetermined class of providers based  
2 on labor organization affiliation or any other criteria other  
3 than that allowed pursuant to this paragraph.

4     *b.* The request for statements of qualifications shall be  
5 posted not less than thirteen and not more than forty-five days  
6 before the date for response in a relevant contractor plan room  
7 service with statewide circulation, in a relevant construction  
8 lead generating service with statewide circulation, and on an  
9 internet site sponsored by either a governmental entity or a  
10 statewide association that represents the governmental entity.  
11 If circumstances beyond the control of the governmental  
12 entity require postponement and there are no changes to the  
13 project's contract documents, a notice of the revised date  
14 shall be posted not less than four and not more than forty-five  
15 days before the revised date for answering the request for  
16 proposals and statements of qualifications in a relevant  
17 contractor plan room service with statewide circulation, in a  
18 relevant construction lead generating service with statewide  
19 circulation, and on an internet site sponsored by either a  
20 government entity or a statewide association that represents  
21 the governmental entity.

22     *c.* The governmental entity shall receive, publicly open, and  
23 read aloud the names of the contractors submitting statements  
24 of qualifications. Within forty-five days after the date of  
25 opening the statements of qualifications submissions, the  
26 governmental entity shall evaluate each proposal or statement  
27 of qualifications submission in relation to the criteria set  
28 forth in the request.

29     4. *a.* After considering the statements of qualifications,  
30 the governmental entity shall issue a request for proposals  
31 to each contractor who meets the qualifications which shall  
32 include selection and evaluation criteria. Each contractor  
33 issued a request for proposals shall be permitted to submit  
34 a proposal and each proposal submitted shall include the  
35 construction manager-at-risk's proposed fees. The request

1 for proposals shall be subject to the requirements of section  
2 73A.28 and the same limitations applied to selection criteria  
3 for the request for statements of qualifications in this  
4 chapter.

5     *b.* The governmental entity shall receive, publicly open, and  
6 read aloud the names of the contractors submitting proposals.  
7 Within forty-five days after the date of opening the proposals,  
8 the governmental entity shall evaluate and rank each proposal  
9 in relation to the criteria set forth in the applicable  
10 request.

11     *c.* The governmental entity or its representative shall  
12 select the construction manager-at-risk that submits the  
13 proposal that offers the best value for the governmental  
14 entity based on the published selection criteria and on  
15 its ranking evaluation. The governmental entity shall  
16 first attempt to negotiate a contract with the selected  
17 construction manager-at-risk. If the governmental entity  
18 is unable to negotiate a satisfactory contract with the  
19 selected construction manager-at-risk, the governmental entity  
20 shall, formally and in writing, end negotiations with that  
21 construction manager-at-risk and proceed to negotiate with the  
22 next construction manager-at-risk in the order of the selection  
23 ranking until a contract is reached or negotiations with all  
24 ranked construction managers-at-risk end.

25     *d.* The governmental entity shall make available to the  
26 public the final scoring and ranking evaluation of the request  
27 for proposals received.

28     5. *a.* If the estimated total cost of trade contract work  
29 and materials packages is in excess of the adjusted competitive  
30 bid threshold established in section 314.1B, the construction  
31 manager-at-risk shall advertise for competitive bids, receive  
32 bids, prepare bid analyses, and award contracts to qualified  
33 firms on trade contract work and materials packages in  
34 accordance with all of the following:

35     (1) The construction manager-at-risk shall prepare a

1 request for statements of qualifications. The request shall  
2 include general information on the project site, project  
3 scope, schedule, selection criteria, and the time and place  
4 for receipt of statements of qualifications. The construction  
5 manager-at-risk shall provide public notice of the request for  
6 statements of qualifications in a relevant contractor plan room  
7 service with statewide circulation, a relevant construction  
8 lead generating service with statewide circulation, and on an  
9 internet site sponsored by either a governmental entity or a  
10 statewide association that represents the governmental entity.  
11 The request for statements of qualifications shall be posted  
12 not less than thirteen and not more than forty-five days before  
13 the date for response.

14     (2) (a) The construction manager-at-risk shall utilize  
15 objective prequalification criteria in the request for  
16 statements of qualifications. All firms who meet the  
17 objective prequalification criteria as a qualified firm  
18 shall be allowed to submit a bid for the relevant trade  
19 contract work and materials package. Upon determining which  
20 firms meet the prequalification criteria, the construction  
21 manager-at-risk shall notify all firms who responded to the  
22 request for qualifications whether they successfully meet the  
23 prequalification criteria. The notification shall include a  
24 list of all firms who were deemed to have successfully met the  
25 prequalification criteria. Notification shall be given no  
26 less than fifteen days prior to the subcontractor bids being  
27 due. Subcontractors who failed to meet the prequalification  
28 standards shall also be provided with information regarding  
29 which prequalification criteria were not met. In addition,  
30 a firm that is prequalified with the state department of  
31 transportation pursuant to section 314.1 shall be considered  
32 to meet the objective prequalification criteria as a qualified  
33 firm and shall be allowed to submit a bid for purposes of work  
34 related to parking lots, streets, site development, or bridge  
35 structure components.

1 (b) Prequalification criteria shall be limited to a  
2 firm's experience as a contractor, capacity of key personnel,  
3 technical competence, capability to perform, the past  
4 performance of the firm and the firm's employees to include  
5 the firm's safety record and compliance with state and federal  
6 law, and availability to and familiarity with the location of  
7 the project subject to bid. Prequalification criteria shall  
8 be reasonably and materially related to the relevant trade  
9 contract work and materials package. The prequalification  
10 criteria shall not include training, testing, or other  
11 certifications that may only be obtained through organized  
12 labor affiliated organizations or other limited-membership  
13 organizations.

14 (3) The governmental entity and the construction  
15 manager-at-risk shall participate in the bid review and  
16 evaluation process. The governmental entity and the  
17 construction manager-at-risk shall open, announce the name  
18 of the contractor submitting a bid, and file all proposals  
19 received, at the time and place specified in the notice to  
20 bidders. After the bids have been opened, reviewed, and  
21 tabulated, the contracts shall be awarded to the lowest  
22 responsive, responsible bidder. All awards and bids shall be  
23 made available to the public.

24 (4) Notwithstanding any other provisions of this paragraph  
25 to the contrary, the construction manager-at-risk may  
26 self-perform work for a trade package that is below the  
27 adjusted competitive bid threshold established in section  
28 314.1B. If a trade package is in excess of the adjusted  
29 competitive bid threshold established in section 314.1B, the  
30 construction manager-at-risk shall notify the governmental  
31 entity in writing of its intent to submit a bid proposal for  
32 a trade package. In submission of a bid, the construction  
33 manager-at-risk shall comply with the requirements of this  
34 paragraph. The governmental entity shall receive the bids,  
35 participate in, and provide oversight of all bid analyses



1 pertinent to the award of subcontracts or rejection of bids on  
2 any trade package for which the construction manager-at-risk  
3 submits a bid to self-perform. Where the construction  
4 manager-at-risk is not the apparent low bidder, the government  
5 shall be responsible for determining whether a recommendation  
6 of award to the construction manager-at-risk is in the best  
7 interests of the project. A construction manager-at-risk shall  
8 not be required to comply with bidding requirements for general  
9 conditions as provided in the contract with the governmental  
10 entity. If the construction manager-at-risk self-performs  
11 the construction work, it shall adhere to any agreement it  
12 may have with one or more labor organizations. However, the  
13 construction manager-at-risk shall not be obligated to adhere  
14 to any terms and conditions of any labor agreement with one or  
15 more labor organizations for those trade contracts that are  
16 not self-performed by the construction manager-at-risk for the  
17 public improvement, and such terms shall be deemed void and  
18 unenforceable.

19     **b.** If a selected trade contractor materially defaults in  
20 the performance of its work or fails to execute a contract,  
21 the construction manager-at-risk may, without advertising,  
22 fulfill the contract requirements or select a replacement trade  
23 contractor to fulfill the contract requirements.

24     **Sec. 10. NEW SECTION. 26A.4 Prohibited contracts.**

25     1. Notwithstanding any other provision of law to the  
26 contrary, a governmental entity shall not be authorized  
27 to enter into a design-build contract for the construction  
28 of a public improvement. For purposes of this subsection,  
29 "*design-build contract*" means a single contract providing for  
30 both design services and construction services that may include  
31 maintenance, operations, preconstruction, and other related  
32 services.

33     2. A governmental entity shall not be authorized to  
34 enter into a guaranteed maximum price contract for public  
35 improvements relating to highway, bridge, or culvert

1 construction.>

2 2. Title page, line 4, after <sector> by inserting <and

3 including effective date and applicability provisions>

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ROBY SMITH